IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (LODGING) NO. 893 OF 2007

1. Smt. Indira B. Popat)
2. Smt. Rashmi B. Popat)

both adults, Indian Inhabitants of Mumbai, having their offices at Popat Compound, S.V. Road, Mumbai-400 102.)..Petitioners

Versus

1. The State of Maharashtra through the Ministry for Urban Development, Government of Maharashtra, Mantralaya, Mumbai-400 032.

2. Municipal Corporation of Greater Mumbai, a body corporate, incorporated under the provisions of the Bombay Municipal Corporation Act, 1888, having their offices at Mahapalika Bhavan, Mahapalika Marg, Fort, Mumbai-400 001.

3. The Deputy City Engineer, M.U.T.P. Bridges, having his office at Municipal Store Building, Dr. E. Moses Road, Opp. Geeta Cinema, Worli, Mumbai-400 018

4. The Special Land Acquisition Officer-7, having his office at M.S.D., Municipal Corporation of Greater Mumbai, Palton Road, Fort, Mumbai-400 001)...Respondents

WITH

WRIT PETITION (LODGING) NO. 894 OF 2007

M/s. Winnsmile Infrastructure Pvt. Ltd.,)
a private limited company incorporated under the)
provisions of the Indian Companies Act, 1956, having)
its office at 142/148, Ghaswala Estate, S.V. Road,)
Mumbai-400 102.)...Petitioners

Versus

1. The State of Maharashtra)
through the Ministry for Urban Development,)
Government of Maharashtra, Mantralaya,)
Mumbai-400 032.)

2. Municipal Corporation of Greater Mumbai,)
a body corporate, incorporated under the)
provisions of the Bombay Municipal Corporation)
Act, 1888, having their offices at Mahapalika)
Bhavan, Mahapalika Marg, Fort,)
Mumbai-400 001.)

3. The Deputy City Engineer,)
M.U.T.P. Bridges, having his office at)
Municipal Store Building, Dr. E. Moses Road,)
Opp. Geeta Cinema, Worli, Mumbai-400 018)

4. The Special Land Acquisition Officer-7,)
having his office at M.S.D., Municipal Corporation)
of Greater Mumbai, Palton Road, Fort,)
Mumbai-400 001)...Respondents

WITH

WRIT PETITION (LODGING) NO. 895 OF 2007

1. Abdul Rahim S. Ghaswala)
2. Abdul Sattar Ghaswala)

both adults, Indian Inhabitants of Mumbai,)
having their offices at 142/148, Ghaswala Estate,)
S.V. Road, Mumbai-400 102.)..Petitioners

Versus

1. The State of Maharashtra)
through the Ministry for Urban Development,)
Government of Maharashtra, Mantralaya,)
Mumbai-400 032.)

2. Municipal Corporation of Greater Mumbai,)
a body corporate, incorporated under the)
provisions of the Bombay Municipal Corporation)
Act, 1888, having their offices at Mahapalika)
Bhavan, Mahapalika Marg, Fort,)
Mumbai-400 001.)

3. The Deputy City Engineer,)
M.U.T.P. Bridges, having his office at)
Municipal Store Building, Dr. E. Moses Road,)
Opp. Geeta Cinema, Worli, Mumbai-400 018)

4. The Special Land Acquisition Officer-7,)
having his office at M.S.D., Municipal Corporation)
of Greater Mumbai, Palton Road, Fort,)
Mumbai-400 001)...Respondents

In all matters:

Mr. S.U. Kamdar, instructed by Mr. Bipin Joshi, for the petitioners.
Mr. K.R. Belosay, Government Pleader, for respondent Nos.s 1 and 4.
Mrs. P.A. Purandare for respondent Nos. 2 and 3.

CORAM: **SWATANTER KUMAR, C.J.** &
S.C. DHARMADHIKARI, J.

Judgment reserved on : April 17, 2007
Judgment delivered on: April 19, 2007

JUDGMENT (Per Swatanter Kumar, C.J.):

By this order, we will dispose of the above referred three writ petitions, as they raise common questions for consideration of the Court on similar facts, at the admission stage itself. Facts in Writ Petition No. 893 of 2007, may be noticed.

2. The petitioners are owners of immovable property bearing C.T.S. No. 212, situated at village Bhandivali, Jogeshwari (West), Mumbai, and more particularly described in Exhibit-A to the petition, being the schedule of the property. This property was affected by road/ over bridge and/or 45 metres wide road which consisted of various structures. According to the petitioners, they were intending to develop the said property under the Scheme of Bombay Municipal Corporation which is commonly known as “bottleneck scheme”. They were served with the notice under sub-sections (3) and (4) of Section 9 of the Land Acquisition Act, 1894 (hereinafter “the Act”), wherein they

were informed that part of the property was about to be acquired by the Government for the Municipal Corporation of Greater Mumbai for widening of the road. A declaration under Section 6 of the Act was published and provisions of Section 17 of the Act were also invoked. On 17th March, 2007, the petitioners received a notice dated 9th March, 2007, issued by respondent No.4, inter alia, threatening them that on 22nd March, 2007, at 11.00 a.m., possession of the property would be taken and the petitioners would be dispossessed. According to the petitioners, they were not paid the compensation in terms of the provisions of the Act. They have also submitted applications seeking their entitlement to the F.S.I. and/or Transferable Development Rights (T.D.R.) and the said applications have been kept pending by the respondents till date and there has been a serious prejudice to the rights of the petitioners. On this premise, the petitioners prayed for issuance of a writ, order or direction requiring the respondents to consider their applications and restraining them from taking possession of the property and/or dispossessing the petitioners from the property in question, pursuant to the notice issued under Section 9 of the Act.

3. At the very outset of the hearing, the learned counsel for the

petitioners fairly stated that the petitioners were not questioning the validity or legality of the acquisition proceedings and the notices issued to them under Section 9 of the Act. However, it was strenuously argued that the respondents should expeditiously decide their rights in terms of the FSI/TDR which has been pending for a considerable time. The learned counsel for the respondents contended that these applications had been submitted by the petitioners very recently. The petitioners requested for a hearing vide letter dated 9th March, 2007. A reminder was sent on 3rd April, 2007, whereafter the present writ petition has been filed, but despite such facts, the respondents would have no objection in deciding the applications of the petitioners expeditiously, provided they hand over the possession of the property immediately. Even to this, the counsel for the petitioners had no objection and it was stated that they would hand over the vacant possession. In view of the stand taken by the parties to the present writ petitions, it is not necessary for us to determine any controversy. Suffice it to note that we expect the parties to discharge their obligations at the earliest and without causing any prejudice to either party.

4. These writ petitions are accordingly disposed of with a direction that the applications of the petitioners shall be considered by

the respondents and appropriate orders passed thereon and benefits in terms of the order be given to the petitioners in accordance with law within one month from the date of passing of this order. This, of course, would be subject to the condition that the petitioners' hand over the vacant possession of the property in question within two weeks from the date of pronouncement of this order. We make it clear that in the event of default, either party shall be entitled to execute this order in accordance with law. In the facts of the case, parties are left to bear their own costs.

CHIEF JUSTICE

S. C. DHARMADHIKARI, J.